

**AMENDMENT NO. ONE (1)
INTERGOVERNMENTAL AGREEMENT**

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SAN LUIS

THIS AGREEMENT is entered into September 3, 2004, **Amendment No. One** to JPA 00-117, AG Contract No.: KR00-1502TRN, filed 08 November, 2001, filed with the Secretary of State under No.: 25018, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE CITY OF SAN LUIS, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

This AGREEMENT is being amended as follows:

Recital 4 is added in full as follows:

4. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

Recital 5 is added in full as follows:

5. The City, in order to obtain federal funds for the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs.

#01

NO. 25018
Filed with the Secretary of State
Date Filed: 09/03/04
Janice K. Brewer
Secretary of State
By: Timothy J. Graenewald

Recital 6 is added in full as follows:

6. The work embraced in this agreement are design and construction of A Street and 10th Avenue for the San Luis port of entry and the estimated costs are as follows:

DESIGN (TRACS No. SS482 03D)

Federal Fund (CBI) @ 94.3% of \$137,858.00	\$ 130,000.00
City of San Luis Funds @ 5.7% of \$137,858.00	\$ 7,858.00
Estimated Total Design Cost	\$ 137,858.00

CONSTRUCTION (TRACS No. SS482 01C)

Estimated Construction Costs (including 15% CE Cost)	\$ 1,355,373.00
Contingencies at 5% of Costs	\$ 67,769.00
Estimated Total Project Cost	\$1,423,142.00

Federal Fund (CBI) @ 94.3% of \$922,587.00(Cap)	\$ 870,000.00
Estimated City Funds @ 5.7% of \$922,587.00	\$ 52,587.00
Estimated City Funds @ 100%	\$ 500,555.00
Estimated Total City Funds	\$ 561,000.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

Article II, **SCOPE OF WORK** is deleted and replace in full as follows:

1. The State will:

- a. As required by the FHWA, provide design review of the project plans, studies and related documents, and when appropriate provide comments which will be incorporated into the design documents.
- b. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.
- c. Agree to be authorized agent for the City, and with the aid and consent of the City and the FHWA, proceed to advertise for, receive and open bids, and subject to the concurrence of the City and the FHWA, enter into a contract with a firm on behalf of the City to whom the award is made for the construction of the project. Such project is to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the City and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.
- d. Enter into a Project Agreement with FHWA covering the work embraced in said construction contract and request the maximum federal funds available, including construction engineering and administration costs
- e. Reimburse the City with federal funds for the cost of the design, construction and construction engineering work addressed under this agreement at an estimated 94.3% of the project cost with a \$1,000,000.00 cap of reimbursable funds.

2. The City will:

a. If such project is approved, the cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and City, each in the proportion prescribed or as fixed and determined by the State, the City and the FHWA as stipulated in this agreement. Therefore, agree to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

b. Provide any required preliminary engineering and planning studies, the environmental analysis and design of the project.

c. Designate the State to be authorized agent on behalf of the City, and all at City expense, to perform certain work and prepare certain documents required by the Federal Highway Administration to qualify certain highway, bridge and railroad grade crossing projects for and to receive Federal funds. Such work may consist of, but is not specifically limited to, the review and approval of the City prepared environmental documents, the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities (when specifically authorized by, for and on behalf of the City, and at no cost to the State) and such other related tasks essential to the achievement of the objectives of this agreement.

d. Be responsible for unforeseen conditions or circumstances required by a change in the extent or scope of the work which increase the cost of said work called for in this agreement.

e. Prior to the solicitation of construction bids, deposit funds in the amount determined to be necessary to match federal funds in the ratio required.

f. Be responsible to acquire necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

g. Be responsible to remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed there from, prior to the start of construction

h. Not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

i. Be responsible to mark and sign school crossings and railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

j. Upon completion of construction, provide for, at its own costs and as an annual item in its budget, proper maintenance, including, but not limited to, signs, and markings necessary for the purpose of regulating, warning and guiding traffic.

III. MISCELLANEOUS PROVISIONS

Paragraph 1 is deleted and replaced in full as follows:

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this

agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

Paragraph 8, 9 and 10 are added in full as follows:

8. This agreement shall remain in force and effect until completion of the work; and related deposits or reimbursements; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another governmental entity.

9. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

10. Non Availability of Funds: Every payment obligation of State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF SAN LUIS

STATE OF ARIZONA

Department of Transportation

By


GUILLERMINA FUENTES
Mayor

By


DALE BURSKIRK, Division Director
Transportation Planning Division

ATTEST

By


ROSALICIA CORDOVA
City Administrator

JPA 00-117

Amendment No. One

APPROVAL OF THE CITY OF SAN LUIS ATTORNEY

I have reviewed the above referenced proposed intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and CITY OF SAN LUIS and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 11 day of August, 2004.



City Attorney



Resolution

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

RESOLUTION NO. 570

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA AUTHORIZING AND APPROVING AN AMENDMENT TO INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA

Whereas the City of San Luis, Arizona and the State of Arizona have entered into an intergovernmental agreement dated November 8, 2001 described as A.G. Contract No. KR00 1502TRN; and

Whereas the parties desire to amend said agreement;


NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the City of San Luis as follows:

1. The amendment to the intergovernmental agreement dated November 8, 2001 described as A.G. Contract No. KR00 1502TRN as attached hereto, and by this reference incorporate herein, is hereby authorized and approved.
2. The Mayor and the city staff are hereby authorized to execute said agreement and take such acts or actions as may be necessary to effectuate and implement said agreement.

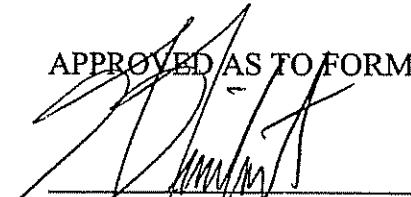
PASSED AND ADOPTED by the Mayor and Council of the City of San Luis, Arizona, this 11 day of AUGUST, 2004.

Guillermina Fuentes, Mayor

ATTEST:


Rosie Cordova, City Clerk

APPROVED AS TO FORM:


Glenn J. Gimbut
City Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TRANSPORTATION SECTION
WRITER'S DIRECT NO: 602.542.8837

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR00-1502-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 30 August 2004

Terry Goddard
ATTORNEY GENERAL

A handwritten signature in black ink, reading "James R. Redpath", written over a horizontal line.

James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:780214